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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-6425

IVAN V.,

Petitioner,

against

THE CITY OF NEW YORK

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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The opinions below, the jurisdictional requisites, the estion presented, the reference to the constitutional pro-ions involved and the statement of the case are all ade-ately covered by the Petition and will, therefore, not be peated or restated.

ARGUMENT

***In re Winship*, 397 U.S. 358 (1970), should not be plied retroactively to cases in the appellate process the time it was decided.**

(1)

This Court has previously refused to review the same ue. In the case of *Matter of D. (Daniel)*, 27 N Y 2d 90, N. E. 2d 627 (1970), the New York Court of Appeals, upholding an adjudication of juvenile delinquency, ed that the *Winship* case should not be given retroac-e effect (27 N Y 2d at p. 96, 261 N. E. 2d at pp. 630-

631). That case was in the appellate process at the time *Winship* was decided. An appeal to this Court was dismissed for want of jurisdiction. This Court also stated that, treating the papers as a petition for writ of certiorari, certiorari was denied. *Daniel Richard D.* v. *County of Onandaga,* 403 U. S. 926 (1971). Two Justices were of the opinion that probable jurisdiction should be noted.

(2)

Although the *Winship* opinion rested heavily on *In re Gault,* 387 U. S. 1 (1967), nothing in that case so clearly foreshadowed *Winship* as to call for retroactive applicability on that ground. In fact, the *Gault* opinion did not deal with the issue of the quantum of proof even though that issue had been considered by the State court, the Arizona Supreme Court. This Court deliberately refused to consider the issue. It said (387 U. S. at pp. 10-11):

> "We shall not consider other issues which were passed upon by the Supreme Court of Arizona. We emphasize that we indicate no opinion as to whether the decision of that court with respect to such other issues does or does not conflict with requirements of the Federal Constitution."

Later in the opinion, Mr. Justice FORTAS referred to *Kent* v. *United States,* 383 U. S. 541 (1966), and quoted the following sentence from page 562 of that opinion (387 U. S. at p. 30):

> "We do not mean . . . to indicate that the hearing to be held must conform with all the requirements of a criminal trial or even of the usual administrative hearing; but we do hold that the hearing must measure up to the essentials of due process and fair treatment."

In the next sentence of the *Gault* opinion he stated that this view was being reiterated.

(3)

It is true that this Court has frequently stated that retroactive effect should be given where the purpose of a new constitutional principle is to enhance the truth-finding function. Those rulings, however, relate to criminal trials. Here we are dealing, not with a criminal trial, but with a juvenile delinquency proceeding. While this Court has applied some of the protections afforded in criminal cases to such proceedings, it has not applied a general rule that all the protection available in a criminal trial must be provided in a delinquency proceeding. It is respectfully submitted that the rule governing retroactivity in criminal cases should not be applied with full rigidity to juvenile delinquency proceedings.

CONCLUSION

The petition for a writ of certiorari should be denied.

April 26, 1972.

Respectfully submitted,

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Corporation Counsel of the
City of New York,
Attorney for Respondent.

Stanley Buchsbaum,
of Counsel.